(18,934.)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1902.

No. 706.

THE NATIONAL COTTON OIL COMPANY ET AL., PLAINTIFFS IN ERROR,

vs.

THE STATE OF TEXAS.

IN ERROR TO THE COURT OF CIVIL APPEALS IN AND FOR THE THIRD SUPREME JUDICIAL DISTRICT OF THE STATE OF TEXAS.

INDEX.

	Original.	Print.
Proceedings in district court	1	1
Caption	1	1
Plaintiff's first amended original petition	1	1
Defendant's original answer	4	3
Judgment	8	6
Appeal bond	9	7
Defendant's assignment of errors	11	8
Bill of costs	13	10
Clerk's certificate	14	10
Proceedings in court of civil appeals	15	11
Order submitting case	15	11
Opinion	15	11
Judgment	19	14
Motion for rehearing	20	14
Order submitting motion for rehearing	27	19
Order overruling motion for rehearing	27	19

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., MAY 18, 1903.

	Original.	Print
Proceedings in supreme court of Texas	28	20
Judgment	28	20
Bill of costs	29	20
Proceedings in court of civil appeals	30	21
Writ of error bond	30	21
Duplicate writ of error	32	22
Assignment of errors	33	23
Bill of costs	36	25
Clerk's certificate	37	25
Petition for writ of error	38	26
Original writ of error	42	28
Citation and service	45	29

1

Caption.

THE STATE OF TEXAS,
County of Travis.

At a term of the district court of the fifty-third judicial district of Texas, begun and holden at Austin, within and for the county of Travis, before the Honorable F. G. Morris, and which is still in session, the following case came on for trial, to wit:

THE STATE OF TEXAS
vs.
THE NATIONAL OIL COMPANY. } No. 18056.

Plaintiff's First Amended Original Petition.

Filed June 2nd, 1902.

In the Name of the State of Texas.

In the District Court of Travis Co., 53rd Judicial District of Texas.

THE STATE OF TEXAS
vs.
THE NATIONAL COTTON OIL CO.

To the Honorable F. G. Morris, judge of said court:

Now comes the plaintiff, The State of Texas, and leave of the court being first had and obtained files this her first amended original petition, and respectfully represents as follows:

The State of Texas, plaintiff herein, at the relation of C. K. Bell, attorney general, and appearing herein by her said attorney general and by Warren W. Moore, district attorney in and for the 26th judicial district of the State of Texas, and by D. A. McFall, attorney at law, complaining of the National Cotton Oil Company, represents:

I.

That the National Cotton Oil Company is a corporation duly organized, chartered and existing under the laws of the State of New Jersey, and that said company is duly authorized and empowered to do and transact business in the State of Texas by reason of a permit heretofore, towit: on the 2nd day of May, 1900, issued
2 to it by the State of Texas, authorizing it to transact business in this State in accordance with its charter and with the constitution and laws of the State of Texas, which corporation has been heretofore duly cited in this case and answered therein.

That the Southern Cotton Oil Company is a corporation duly organized, chartered and existing under the laws of the State of New Jersey, and that said company is duly authorized and empowered

to do and transact business in the State of Texas by virtue of a permit heretofore, towit: on the 3rd day of June, 1897, issued to it by the State of Texas, authorizing it to transact business in this State in accordance with its charter and with the constitution and laws of the State of Texas.

That the Taylor Cotton Oil Works is a corporation duly organized and existing under and by virtue of the laws of the State of Texas, by virtue of a charter granted by the State of Texas on the 25th day of August, 1898, authorizing and empowering it to transact business as such corporation, in accordance with its charter and with the constitution and laws of the State of Texas.

II.

That each of said foreign corporations were, from the time of the issuance of the permits authorizing them to do business in the State of Texas, and has ever since been and is still, and that said Taylor Cotton Oil Works from the date of its charter has been and is still engaged in the business of the manufacture and sale of cotton seed oil, cotton seed meal and the other bi-products of cotton seed; that the business in which each and all of such corporations were engaged necessitated the purchase of cotton seed from which the products which they manufactured and sold were made, and that said cotton seed was an article and commodity of merchandise.

III.

That heretofore, towit: on or about the first day of November, 1901, and on each and every day prior and subsequent thereto since the 2nd day of May, 1900, said corporations were and have been engaged in the business of buying cotton seed in the various
3 counties of the State of Texas; that on or about the first day of November, 1901, the National Cotton Oil Company made and entered into a combination with each of the other of said corporations, and that each of the other of said corporations made and entered into a combination with the said National Cotton Oil Company and with each other, and that each of said corporations made and entered into a combination with various other persons, firms and corporations, whose names are to the plaintiff unknown, and that said corporations became members of and parties to a pool, trust, agreement, confederation and understanding with each of the other of said corporations, firms and persons whereby they did each for itself and with each other and all together agree to regulate and fix and did regulate and fix the price at which they would buy cotton seed; that they especially regulated and fixed the price of cotton seed throughout the State of Texas at $14.00 per ton and agreed amongst and with each other that they would not give more than said $14.00 per ton for cotton seed in any of the towns and communities of the State of Texas.

IV.

That by creating and entering into and becoming a member of and a party to such pool, trust, agreement, combination, confederation and understanding with said other persons, firms and corporations aforesaid, and by maintaining the agreement to regulate and fix the price of cotton seed aforesaid, the defendant was guilty of a violation of the laws of the State of Texas.

That the defendant in consequence of the acts hereinbefore complained of has forfeited its permit to transact business in the State of Texas.

Wherefore, premises considered, plaintiff prays, defendant having already answered herein, that it have judgment canceling and forfeiting the permit heretofore granted to the defendant, authorizing it to do and transact business in the State of Texas, and the defendant enjoined from transacting business in the State of Texas, for costs, and for all other and further relief to which plaintiff
4 may be entitled in law or in equity.

C. K. BELL,
Attorney General,
W. W. MOORE,
District Attorney,
D. A. McFALL,
Attorneys for Plaintiff.

(Endorsed:) No. 18058. The State of Texas *vs.* The National Cotton Oil Company. Plaintiff's first amended original petition. Filed June 2, 1902, in the district court Travis county, Texas, 53 judicial district. Jas. P. Hart, clerk, by J. H. Hart, deputy.

Defendant's Original Answer.

Filed June 2nd, 1902.

THE STATE OF TEXAS
vs.
THE NATIONAL COTTON OIL CO. } No. —.

The National Cotton Oil Company, defendant, comes by its attorneys and demurs to plaintiff's petition herein upon the following grounds, viz:

I. The allegations of plaintiff's petition are insufficient in law to entitle plaintiff to any relief or to require defendant to further answer herein.

II. There is no valid law of the State of Texas prohibiting the acts complained of in plaintiff's petition.

III. The act of the legislature of the State of Texas entitled "An act to define trusts and to provide for penalties and punishment of corporations, persons, firms and associations of persons connected with them, and to promote free competition in the State of Texas,"

approved March 30th, 1889, and articles 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, and 988 of the Penal Code of the State of Texas, based upon said act are in contravention of that provision of section 1 of article XIV of the amendments to the Constitution of the United States, which provide that no State
5 shall deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws, because (1) by section 13 of said act and article 988 of said Penal Code, it is provided that the said statutes "shall not apply to agricultural products or live stock while in the hands of the producer or raiser,"—wherefore defendant says that the said statutes arbitrarily discriminate against it and its stockholders in favor of other classes, towit: the producers and raisers of live stock and agricultural products without any just reason, and thereby deny defendant and its stockholders the equal protection of the laws; and (2) because the penalties prescribed by said statutes for the violation of their provisions are so excessive and the provisions thereof purporting to define the acts to be thus punished are so vague and uncertain that defendant is denied the right to resort to the judicial tribunals of the country to defend the legality of its acts in the conduct of its business, except upon the condition that if not successful it shall subject all its property in this State to confiscation and forfeit its right to do business in this State; wherefore, defendant says that said statutes operate to deprive it of its property without due process of law and to deny it the equal protection of the laws.

IV. The act of the legislature of the State of Texas, entitled "An act to define trust-, provide for penalties and punishment of corporations, persons firms and associations of persons connected with them, and to promote free competition in the State of Texas, and to repeal all laws and parts of laws in conflict with this act," approved April 30th, 1895, and articles 5313, 5314, 5315, 5316, 5317, 5318, 5319, 5320, and 5321 of the Revised Statutes of Texas, and 988*a*, 988*b*, 988*c*, 988*d* of the Penal Code, based upon said act of April 30th, 1895, are in contravention of that provision of section 1 of article XIV of the amendments of the Constitution of the United States, which provides that no State shall deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the
6 laws, because (1) by section 12 of said act, and article 5320 of the Revised Statutes and article 988 of the Penal Code, it is provided that the said statutes "shall not be held to apply to live stock and agricultural products in the hands of the producer or raiser" nor "be understood or construed to prevent the organization of laborers for the purpose of maintaining any standard of wages,"—wherefore, defendant says that the said statutes arbitrarily discriminate against it and its stock holders in favor of other classes towit: Producers and raisers of live stock and agricultural products, and laborers, without any just reason, and thereby deny defendants and its stockholders the equal protection of the laws; and (2) because

the penalties prescribed by said statutes for the violation of their provisions are so excessive and the provisions thereof purporting to define the acts to be thus punished are so vague and uncertain that defendant is denied the right of resort to the judicial tribunals of the country to defend the legality of its acts in the conduct of its business, except upon the condition that if not successful it shall subject all its property in this State to confiscation and forfeit its right to do business in this State; wherefore defendant says that said statutes operate to deprive it of its property without due process of law and to deny it the equal protection of the laws.

V. The act of the legislature of the State of Texas, entitled "An act to prohibit pools, monopolies and conspiracies to control business and prices of articles; to prevent the formation of pools, trusts, monopolies, and combinations of charters of corporations that violates the terms of this act, and to authorize the institution of prosecutions and suits therefor," approved May 25th, 1899, is in contravention of that provision of section 1 of article XIV of the amendments of the Constitution of the United States which provides that no State shall deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws, because (1) by section 12 of the act of
7 the legislature of Texas, entitled "An act to define trusts, provide for penalties and punishment of corporations, persons, firms and association of persons connected with them, and to promote free competition in the State of Texas, and to repeal all laws and parts of laws in conflict with this act," approved April 30th, 1895, and by article 5320 of the Revised Statutes of the State of Texas, and by article 988 of the Penal Code of the State of Texas, none of which have been repealed, and to all of which the said act approved May 25th, 1899, is cumulative and is a mere supplement and with which it is in *pari materia*, it was and is expressly provided that the said statutes shall not be held to apply to live stock and agricultural products in the hands of the producer or raiser, nor to the organization of laborers, for the purpose of maintaining any standard of wages,—wherefore defendant says that the said statutes arbitrarily discriminate against it and its stockholders in favor of other classes, towit: producers and raisers of live stock and agricultural products and laborers, without any just reason; and thereby deny defendant and its stockholders the equal protection of the laws; and (2) because the penalties prescribed by said statutes for the violation of their provisions are so excessive, and the provisions thereof purporting to define the acts to be thus punished are so vague and uncertain that defendant is denied the right of resort to the judicial tribunals of the country to defend the legality of its acts in the conduct of its business, except upon the condition that if not successful it shall subject all its property in this State to confiscation and forfeit its right to do business in this State; wherefore, the defendant says that said statutes operate to deprive it of its property without due process of law and to deny it the equal protection of the laws.

VI. The act of the legislature of the State of Texas, entitled "An

act to prohibit pools, trusts, monopolies and conspiracies to control business and prices of articles; to prevent the formation of pools, trust, monopolies and combinations of charters of corporations that violates the terms of this act and to authorize the insti-
8 tution of prosecution- and suits therefor," approved May 25th, 1899, is in contravention of section 35, article III of the constitution of the State of Texas, which provides that "No bill (except general appropriation bills which may embrace the various subjects and accounts for and on account of which moneys are appropriated) shall contain more than one subject, which shall be expressed in its title. But if any subject shall be embraced in an act which shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be so expressed," because (1) the title of said act is incomplete and unintelligible; and (2) said act provides for the forfeiture of the corporate rights and franchises of all domestic corporations and for the forfeiture of the right and privilege of all foreign corporations to do any business in this State, and in addition thereto prescribes severe pecuniary fines and penalties for the violation of the said statute while no such subject is expressed in the title of said act.

And of all these demurrers, and of each ground therefor, defendant prays judgment of the court.

BAKER, BOTTS, BAKER & LOVETT,
Attorneys for the National Cotton Oil Company, Defendant.

(Endorsed:) No. 18,056. The State of Texas *vs.* The National Cotton Oil Company. Original answer of the National Cotton Oil Company. Filed June 2, 1902. Jas. P. Hart, clerk, by J. H. Hart, deputy.

Judgment.

June 2nd, 1902.

THE STATE OF TEXAS
vs.
THE NATIONAL COTTON OIL COMPANY. } No. 18056.

This cause came on to be heard on this the 2nd day of
9 June, 1902, when plaintiff, The State of Texas, appeared by her attorney general and by W. W. Moore, district attorney, and D. A. McFall, and defendant The National Cotton Oil Company appeared by its attorneys; and both parties announced ready for trial; thereupon came on to be heard defendant's demurrers to plaintiff's petition and after hearing the said petition and demurrers and argument of counsel thereon and after due consideration thereof, the court is of the opinion that the law is with the plaintiff; and

It is therefore adjudged and decreed that defendant's demurrers to plaintiff's petition be and the same are each and all hereby overruled; to which ruling the defendant excepts; and the defendant

declining further to answer herein, the court is of the opinion that plaintiff is entitled to all the relief prayed for in its petition;

It is therefore ordered, adjudged and decreed that the license or permit granted by plaintiff, The State of Texas, as described or referred to in its petition herein to the defendant The National Cotton Oil Company, to transact or carry on business within the State of Texas, be and the same is hereby forfeited, revoked and canceled and is adjudged to be of no further force, validity or effect whatever, and that the defendant be enjoined from transacting any business in the State of Texas, except such business as may be and constitute interstate commerce; and

It is further ordered and adjudged that plaintiff recover of defendant all the costs of this suit, for which let execution issue.

To all of which defendant excepts and in open court gives notice of appeal to the court of civil appeals in and for the third supreme judicial district.

Appeal Bond.

Filed June 2nd, 1902.

In Travis County District Court, Fifty Third Judicial District.

10

STATE OF TEXAS
vs.
THE NATIONAL COTTON OIL COMPANY. } No. 18056.

Whereas in the above numbered and entitled cause, pending in the fifty-third judicial district court in and for Travis county, and at a regular term of said court, to wit: on this the 2nd day of June, 1902, the State of Texas recovered judgment against the National Cotton Oil Company, forfeiting, canceling and revoking the permit or license of said company to transact business in the State of Texas, and enjoining it from transacting and business in the State of Texas, except such business as may be and constitute interstate commerce, and for all costs of suit, from which judgment, the National Cotton Oil Company has taken an appeal to the court of civil appeals for the third supreme judicial district and desires to suspend the execution of said judgment during the pendency of said appeal;

Now, therefore, we, the National Cotton Oil Company, as principal, and G. C. Street and James F. Grogan as sureties acknowledge ourselves bound to pay the State of Texas the sum of seven thousand dollars, conditioned that The National Cotton Oil Company, appellant, shall prosecute its appeal with effect, and in case the judgment of the supreme court or the court of civil appeals shall be against it, it shall perform its judgment, sentence or decree and pay all such damages as said court may award against it.

Witness our hands this 2nd day of June, A. D., 1902.

THE NATIONAL COTTON OIL COMPANY,
By BAKER, BOTTS, BAKER & LOVETT,
Its Attorneys of Record.
G. C. STREET, *Surety.*
JAMES F. GROGAN, *Surety.*

Approved June 2nd, 1902.

JAS. P. HART, *Clerk.*

(Endorsed:) No. 18056. State of Texas *vs.* The National Cotton Oil Company. Bond. Filed June 2nd, 1902. Jas. P. Hart, clerk.

11 *Defendant's Assignments of Error.*

Filed June 4th, 1902.

STATE OF TEXAS
vs.
THE NATIONAL COTTON OIL COMPANY. } No. 18056.

Now comes The National Cotton Oil Company, defendant in the above numbered and entitled cause, and on its appeal herein assigns errors committed upon the trial of this cause as follows, towit:

First.

The court erred in overruling defendant's demurrer numbered III, to plaintiff's petition, based upon the ground that the act of the legislature of the State of Texas, entitled, "An act to define trusts and to provide for penalties and punishment of corporations, persons, firms and associations of persons connected with them, and to promote free competition in the State of Texas," approved March 30th, 1899, and articles 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, and 988 of the Penal Code of the State of Texas, based upon said act are in contravention of that provision of section 1, of article XIV, of the amendments of the Constitution of the United States, which provides that no State shall deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

Second.

The court erred in overruling defendant's demurrer, numbered IV, to plaintiff's petition, based upon the ground that the act of the legislature of the State of Texas, entitled "An act to define trusts, provide for penalties and punishment of corporations, persons firms and associations of persons connected with them, and promote free competition in the State of Texas, and to repeal all laws and parts of laws in conflict with this act," approved April 30th, 1895, and
12 articles 5313, 5314, 5315, 5316, 5317, 5318, 5319, 5320 and 5321 of the Revised Statutes of Texas, and 988*a*, 988*b*, 988*c*, and 988*d* of the Penal Code of said State, based upon said act of April 30th, 1895, are in contravention of that provision of section 1, article IV, of the amendments of the Constitution of the United States, which provides that no State shall deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction equal protection of the laws.

Third.

The court erred in overruling defendant's demurrer numbered V to plaintiff's petition, based upon the ground that the act of the legislature of the State of Texas, entitled "An act to prohibit pools, trusts, monopolies and conspiracies to control business and prices of articles, to prevent the formation or operation of pools, trusts, monopolies and combinations of charters of corporations that violates the terms of this act, and to authorize the institution of prosecutions and suits therefor," approved May 25th, 1899, is in contravention of that provision of section 1 of article XIV of the amendments of the Constitution of the United States, which provides that no State shall deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

Fourth.

The court erred in overruling defendant's demurrer numbered VI to plaintiff's petition, based upon the ground that the act of the legislature of the State of Texas, entitled, "An act to prohibit pools, trusts, monopolies and conspiracies to control business and prices of articles; to prevent the formation or operation of pools, trusts, monopolies and combinations of charters of corporations that violates the terms of this act, and to authorize the institution of prosecutions and suits therefor," approved May 25th, 1899, is in contravention of section 35 of article III of the constitution of the State of Texas.

13

Fifth.

The court erred in overruling defendant's demurrer numbered II to plaintiff's petition, based on the ground that there is no valid law of the State of Texas prohibiting the acts complained of in plaintiff's petition.

Sixth.

The court erred in overruling defendant's demurrer numbered I to plaintiff's petition, based upon the ground that the allegations of said petition were insufficient in law to entitle plaintiff to any relief or to require defendant to further answer.

Seventh.

The court erred in rendering judgment against defendant and in not rendering judgment that plaintiff take nothing by its suit herein.

Wherefore, The National Cotton Oil Company, defendant, prays that the judgment against it be reversed and that final judgment be rendered in its favor.

BAKER, BOTTS, BAKER & LOVETT,
Attorneys for National Cotton Oil Company,
Defendant and Appellant.

(Endorsed:) No. 18,056. State of Texas *vs.* National Cotton Oil Company. Defendant's assignment of errors. Filed June 4th, 1902. Jas. P. Hart, clerk, by D. J. Pickle, deputy.

Bill of Costs.

THE STATE OF TEXAS
vs.
THE NATIONAL COTTON OIL COMPANY. } No. 18056.

To officers of court, Dr.

Clerk's Costs.

		Dolls.	Cts.
Docketing suit			.20
	Entering appearances		.30
14	Filing papers		.60
	Entering judgment		1.15
Approving bond			1.50
Transcript			8.50
Assessing damages			.50
Filing and certifying brief			.90
Taxing costs			.25
			$13.90

Sheriff's Costs.

J. M. Davis, sheriff, venire fee	.50
Total	$14.40

Clerk's Certificate.

THE STATE OF TEXAS, }
County of Travis. }

I, Jas. P. Hart, clerk of the district court within and for the county and State aforesaid, do hereby certify that the within and foregoing *on* 18 pages *is* a true and correct transcript of all the proceedings had in this court in cause No. 18056, of The State of Texas *vs.* The National Cotton Oil Company, as the same appear of record and on file in this office.

Given under my hand and seal of office, at Austin, Texas, this the 4th day of June, A. D. 1902.

JAS. P. HART,
[SEAL.] *Clerk District Court, Travis County, Texas.*

Endorsed: No. 2928. The National Cotton Oil Company, appellant *vs.* The State of Texas, appellee. From the district court of Travis county, for the 53rd judicial district of Texas. Applied for by Baker, Botts, Baker & Lovett, attorneys for appellants, on the

5th day of June, A. D., 1902, and delivered to the above named attorneys on the 5th day of June, 1902. Jas. P. Hart, clerk of the district court of Travis county. Filed in court of civil ap-
15 peals, 3rd supreme judicial district, Austin, Texas, Aug. 16, 1902. R. H. Connerly, clerk.

PROCEEDINGS IN COURT OF CIVIL APPEALS.

Order Submitting Case.

Made January 28th, 1903.

NAT'L COTTON OIL CO. *vs.* STATE OF TEXAS. } No. 2829.

Appeal from Travis county.

Submitted on briefs of both parties.

Opinion of Court of Civil Appeals.

Delivered February 4, 1903.

THE NATIONAL COTTON OIL COMPANY *vs.* THE STATE OF TEXAS. } No. 2928.

Appeal from Travis county.

Opinion.

This suit was instituted in the name and on behalf of the State of Texas, by the attorney general and the district attorney of the twenty-sixth and fifty-third judicial districts, against The
16 National Cotton Oil Company, a foreign corporation, to forfeit the license granted the defendant to transact business in the State for alleged violation of the anti-trust statutes. The State's amended petition upon which the case was tried, alleged:

"I. That the National Cotton Oil Co. is a corporation duly organized, chartered and existing under the laws of the State of New Jersey, and that said company is duly authorized and empowered to do and transact business in the State of Texas, by reason of a permit heretofore, to wit, on the 2nd day of May, 1900, issued to it by the State of Texas, authorizing it to transact business in this State in accordance with its charter and with the constitution and laws of the State of Texas, which corporation has been heretofore duly cited in this case and answered herein.

"That the Southern Cotton Oil Company is a corporation duly

organized, chartered and existing under the laws of the State of New Jersey, and that said company is duly authorized and empowered to do and transact business in the State of Texas, by virtue of a permit heretofore, to wit, on the 3rd day of June, 1897, issued to it by the State of Texas, authorizing it to transact business in this State, in accordance with its charter and with the constitution and laws of the State of Texas.

"That the Taylor Cotton Oil Works is a corporation duly organized and existing under and by virtue of the laws of the State of Texas, by virtue of a charter granted by the State of Texas, on the 25th day of August, 1898, authorizing and empowering it to transact business as such corporation, in accordance with its charter and with the constitution and laws of the State of Texas.

"II. That each of said foreign corporations *were*, from the time of the issuance of the permits authorizing them to do business in the State of Texas, and has ever since been and is still, and that the said Taylor Cotton Oil Works, from the date of its charter has been and is still engaged in the business of the manufacture and sale of cotton seed oil, cotton seed meal and other by-products of
17 cotton seed; that the business in which each and all of such corporations were engaged necessitated the purchase of cotton seed, from which the products which they manufactured and sold were made, and that said cotton seed was an article and commodity of merchandise.

"III. That heretofore, to wit, on or about the 1st day of November, 1901, and on each and every day prior and subsequent thereto, since the second day of May, 1900, said corporations were and have been engaged in the business of buying cotton seed in the various counties of the State of Texas; that on or about the 1st day of November, 1901, the National Cotton Oil Company made and entered into a combination with each of the other of said corporations, and that each of the other of said corporations made and entered into a combination with the said National Cotton Oil Company and with each other, and that each of said corporations made and entered into a combination with various other persons, firms and corporations, whose names are to the plaintiff unknown, and that said corporations became members of and parties to a pool, trust, agreement, confederation and understanding with each of the other of said corporations firms and persons, whereby they did each for itself and with each other and all together, agree to regulate and fix, and did regulate and fix the price at which they would buy cotton seed; that they especially regulated and fixed the price of cotton seed throughout the State of Texas at $14 per ton, and agreed amongst and with each other that they would not give more than said $14 per ton for cotton seed in any of the towns and communities of the State of Texas.

"IV. That by creating and entering into and becoming a member of and party to such pool, trust, agreement, combination, confederation and understanding with said other persons, firms and corporations aforesaid, and by maintaining the agreement to regu-

late and fix the price of cotton seed aforesaid, the defendant was guilty of a violation of the laws of the State of Texas. That the defendant, in consequence of the acts hereinbefore complained of, has forfeited its permit to transact business in the State of
18 Texas.

"Wherefore, premises considered, plaintiff prays, defendant having already answered herein, that it have judgment canceling and forfeiting the permit heretofore granted to the defendant authorizing it to do and transact business in the State of Texas and the defendant enjoined from transacting business in the State of Texas, for costs, and for all other and further relief to which plaintiff may be entitled in law and equity."

Defendant did not deny the facts thus alleged, but demurred to said petition upon the grounds: (1) That the petition was insufficient in law to entitle the plaintiff to the relief sought; (2) that there was no valid law of the State prohibiting the acts charged; (3) that the anti-trust statute of 1889, and the provisions of the revised Penal Code, based thereon, were in contravention of the Federal Constitution; (4) that the anti-trust statute of 1895, and the provisions of the revised civil and penal codes, based thereon, were also in contravention of the Federal Constitution; (5) that the anti-trust statute of 1899 was also in contravention of the Federal Constitution, and (6) that the anti-trust statute of 1899 was not enacted in conformity with the State constitution.

All the demurrers were overruled, and the defendant declining to further answer, judgment was rendered in favor of the State in accordance with the prayer of its petition, forfeiting, revoking and canceling the license which had been granted to defendant to transact business, and enjoining it from transacting any business in the State of Texas, except such business as may be and constitute interstate commerce; and the costs of the suit were also adjudged against defendant.

The trial court did not err in overruling appellant's demurrers. While it has been correctly held that certain provisions of the anti-trust statutes are unconstitutional, the supreme court, in the case of The State of Texas *vs.* The Shippers' Compress & Warehouse Co., 69 S. W. 61, relying upon the case of The Waters-Pierce Oil Co.
19 *vs.* The State of Texas, 177 U. S., 28, holds that so much of these statutes that authorize the canceling and forfeiture of a charter or permit to do business within the State of Texas, are valid, and are not in violation of the Constitution.

Judgment affirmed.

FISHER,
Chief Justice.

(Endorsed:) No. 2928. National Cotton Oil Co. *vs.* The State of Texas. Appeal from Travis county. Opinion. Affirmed. Fisher, chief justice. Filed in court of civil appeals, 3rd supreme judicial district, Austin, Texas, Feb. 4, 1903. R. H. Connerly, clerk. Filed in supreme court Mar. 31, 1903. F. T. Connerly, clerk.

Judgment of Court of Civil Appeals.

Rendered February 4th, 1903.

NATIONAL COTTON OIL COMPANY
vs.
STATE OF TEXAS. } No. 2928.

Appeal from district court of Travis county.

Opinion by Chief Justice Fisher.

This cause came on to be heard on the transcript of the record, and the same being inspected, because it is the opinion of the court that there was no error in the judgment; it is therefore considered, adjudged and ordered that the judgment of the court below be in all things affirmed; that the appellant, The National Cotton Oil Company, principal and its sureties, G. C. Street and Jas. F. Grogan, pay all costs in this behalf expended, and this decision be certified below for observance.

20 *Motion for Rehearing.*

Filed February 17th, 1903.

In the Court of Civil Appeals, Third Supreme Judicial District.

NATIONAL COTTON OIL COMPANY, Appellant,
vs.
STATE OF TEXAS.

Appeal from Travis county district court, 53d district.

Now comes The National Cotton Oil Company, appellant in this cause, and moves the court to set aside the judgment heretofore rendered herein affirming the judgment of the district court and to grant appellant a rehearing upon the grounds following, that is to say:

First.

This court erred in refusing to sustain appellant's first assignment of error, which reads as follows: The court erred in overruling defendant's demurrer numbered III to plaintiff's petition, based upon the ground that the act of the legislature of the State of Texas, entitled "An act to define trusts and to provide for penalties and punishment of corporations, persons, firms and associations of persons connected with them, and to promote free competition in the State of Texas," approved March 30th, 1889, and articles 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, and 988 of the Penal Code of the State of Texas, based upon said act, are in contravention of

that provision of section 1, of article XIV of the amendments of the Constitution of the United States, which provides that no State shall deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

21

Statement.

Section 23 of the anti-trust statute of March 30th, 1889, (General Laws 1889, page 142) reads as follows:

"SECTION 13. The provisions of this act shall not apply to agricultural products or live stock while in the hands of the producer or raiser."

The substance of this section was carried into the Penal Code of 1895 as article 988.

The grounds of demurrer were, in effect, (R. 6–7) that the statutes mentioned were in contravention of section 1 of article XIV of the amendments to the Constitution of the United States because (1) that by reason of section 13 they arbitrarily discriminate against appellant, and in favor of the producers and raisers of live stock and agricultural products without any just reason, and thereby deny appellant the equal protection of the laws, and (2) the penalties prescribed by the statutes are so excessive and the provisions thereof purporting to define the acts punished are so vague that appellant is practically denied the right of resort to the judicial tribunals to defend the legality of its acts except on condition that if not successful, it shall subject all its property to confiscation and forfeit its right to do business in the State.

Authorities.

Connolly *vs.* Union Sewer Pipe Co. 184 U. S., 540;
Cotting *vs.* Kansas City Stock Yards Co., 183 U. S. 79, 83, 99–102.

Second.

This court erred in refusing to sustain appellant's second assignment of error, which reads as follows: The court erred in overruling defendant's demurrer numbered IV, to plaintiff's petition, based upon the ground that the act of the legislature of the State of Texas, entitled "An act to define trusts, provide for penalties and punishment of corporations, persons, firms and associations of persons connected with them, and to promote free competition in the State of Texas, and to repeal all laws and parts of laws in conflict
22 with this act," approved April 30th, 1895, and articles 5313, 5314, 5315, 5316, 5317. 5318, 5319, 5320 and 5321, of the Revised Statutes of Texas, and 988*a*, 988*b*, 988*c*, and 988*d* of the Penal Code of said State, based upon said act of April 30th, 1895, are in contravention of that provision of section 1, article XIV of the amendments of the Constitution of the United States which provides that no State shall deprive any person of life, liberty or property without

due process of law, nor deny to any person within its jurisdiction equal protection of the laws.

Statement.

Section 12 of the anti-trust statute of April 30, 1895 (General Laws 1895, p. 115) reads as follows:

"SECTION 12. That the provisions hereof shall be held cumulative of each other and of all other laws in any way affecting them now in force in this State, provided this act shall not be held to apply to live stock and agricultural products in the hands of the producer or raiser; nor shall it be understood or construed to prevent the organization of laborers for the purpose of maintaining any standard of wages."

The substance of this section was carried into the Revised Civil Statutes of 1895 as article 5320.

The grounds of demurrer were in effect (R. 7–8) that the statutes mentioned were in contravention of section 1 of article XIV of the amendments to the Constitution of the United States, because (1) that by reason of section 12 they arbitrarily discriminate against appellant and in favor of the producers and raisers of live stock and agricultural products without any just reason, and thereby deny appellant the equal protection of the laws and (2) the penalties prescribed by the statutes are so excessive, and the provisions thereof purporting to define the acts punished are so vague that appellant is practically denied the right of resort to the judicial tribunals to defend the legality of its acts except on condition that if not successful it shall subject all its property to confiscation and forfeit its right to do business in the State.

23

Authorities.

Connally *vs.* Union Sewer Pipe Co. 184 U. S., 540.
Cotting *vs.* Kansas City Stock Yards Co. 183 U. S., 79, 83, 99–102.

Third.

This court erred in refusing to sustain appellant's third assignment of error, which reads as follows: The court erred in overruling defendant's demurrer numbered V to plaintiff's petition, based upon the ground that the act of the legislature of the State of Texas, entitled "An act to prohibit pools, trusts, monopolies and conspiracies to control business and prices of articles, to prevent the formation or operation of pools, trusts, monopolies and combinations of charters of corporations that violates the terms of this act and to authorize the institution of prosecutions and suits therefor," approved May 25th, 1899, is in contravention of that provision of section 1 of article XIV of the amendments of the Constitution of the United States which provides that no State shall deprive any person of life, liberty or property without due process of law nor deny to any person within its jurisdiction the equal protection of the laws.

Statement.

The first anti-trust statute of this State enacted March 30th, 1889 (Gen. Laws, 1889, page 114) was entirely supplanted by the act of April 30th, 1895 (Gen. Laws 1895, page 112). But notwithstanding such repeal, the act of March 30th, 1889 was carried as a whole into the Penal Code of 1895, as articles 976–988. The first five sections of the act of April 30th, 1895, are a substantial reproduction of the first five sections of the act of 1889, except that the act of 1895 was extended so as to prohibit agreements creating restrictions in "aids to commerce," and "in the full and free pursuit of any business authorized or permitted by the laws of this State."

Section 6 of the act of 1895 literally reproduces section 1 of the same act, defining trusts, and then prescribes a penalty for those engaged in such combinations. The remaining sections of the act of 1895 are substantial reproductions of corresponding sections
24 of the act of 1889.

Sections 1, 2, 3, 4, 5, 10, 11, 12, 13 and 14 of the act of 1895 were carried in the Revised Civil Statutes of 1895 as articles 5313, 5314, 5315, 5316, 5317, 5318, 5319, 5320, 5321, and 5321*a*. Sections 6, 7, 8, and 9 were carried into the Penal Code of 1895 as articles 988*a*, 988*b*, 988*c* and 988*d*. Article 5318 of the Revised Civil Statutes (being section 10 of the act of 1895) was amended by the act of June 5th, 1899 (Gen. Laws 1899, page 310) so as to increase the minimum penalty from $50 to $200 per day, but articles 981 and 988*a* of the Penal Code, which also fixed the minimum penalty for a violation of the act at $50, were not amended; nor did the amendatory act of June 5th, 1899 refer in terms to the anti-trust act of 1895, from section 10 of which article 5318 R. S. was taken.

Section 13 of the act of 1889 provided that said act should not apply to agricultural products or live stock, while in the hands of the producer or raiser, and the same exemption was renewed by section 12 of the act of 1895, with the addition that said act should not be construed to prevent the organization of laborers for the purpose of maintaining any standard of wages. Section 13 of the act of 1889 was carried into and now appears as article 988 of the Penal Code, revised in 1895, and section 12 of the act of 1895 was carried into and now appears as article 5320 of the Revised Civil Statutes of 1895.

The last anti-trust act, that of May 25th, 1899 (Gen. Laws 1899, p. 246) contains no repealing clause, but declares in section 14 that "the provisions of the foregoing sections and the pains and penalties provided for for violations of this act shall be held and be construed to be cumulative to all laws now in force this State."

The demurrer was based upon the proposition that the act of 1899 was in violation of section 1 of article XIV of the Constitution of the United States, for the same reasons that the acts of 1889 and 1895 were alleged in the answer to be in contravention thereof, be-
25 cause, as set forth by the demurrer, the act of 1899 was by its terms cumulative and a mere supplement to and *in pari*

materia with the acts of 1889 and 1895 and the Civil and Penal Code based on said acts.

Authorities.

Connally *vs.* Union Sewer Pipe Co., 184 U. S. 540
Cotting *vs.* Kansas City Stock Yard Co., 183 U. S. 79, 83, 99–102
Cain *vs.* State, 20 Texas, 362;
Shelby *vs.* Johnson, Dallam, 597;
Bryan *vs.* Sundberry, 5 Texas 355, 362;
Selman *vs.* Wolff, 27 Texas, 70;
Hanrick *vs.* Hanrick, 54 Texas, 103;
Alexander *vs.* Mayor, 5 Cranch. 1;
Patterson *vs.* Winn, 11 Wheaton, 380, 385;
Ryan *vs.* Carter, 93 U. S., 78, 84;
Dwarris on Statutes, Potter's edition, p. 189
Sutherland on Statutory Construction, section 288;
Pierce *vs.* Atwood, 13 Mass., 324, 344;
Reg *vs.* Tonbridge, Overseers, L. R. 13, Q. B. Div., 342.

Fourth.

This court erred in refusing to sustain appellant's fourth assignment of error, which reads as follows: The court erred in overruling defendant's demurrer numbered VI to plaintiff's petition, based upon the ground that the act of the legislature of the State of Texas, entitled "An act to prohibit pools, trusts, monopolies and conspiracies to control business and prices of articles, to prevent the formation or operation of pools, trusts, monopolies and combinations of charters of corporations that violates the terms of this act, and to authorize the institution of prosecutions and suits therefor," approved May 25th, 1899, is in contravention of section 35 of article III of the constitution of the State of Texas.

Statement.

The title of the anti-trust act of May 25th, 1899, is as follows: "An act to prohibit pools, trusts, monopolies and conspiracies to
26 control business and prices of articles, to prevent the formation or operation of pools, trusts, monopolies and combinations of charters of corporations that violates the terms of this act and to authorize the institution of prosecutions and suits therefor."

Authorities.

Constitution of 1876, article III, section 35.

Fifth.

This court erred in refusing to sustain appellant's fifth and sixth assignments of error which in effect present the same point, and were therefore briefed and argued together, and as presenting the

single proposition that the combination alleged is not illegal under the common law, and even if it were, the State is not entitled to forfeit the license of appellant therefor.

Authorities.

Queen Ins. Co. *vs.* State, 86 Texas, 250, 274–275.

Appellant reports that Honorable Charles K. Bell, attorney general of the State of Texas, and Honorable Warren W. Moore, district attorney of the 26th and 53rd judicial districts of Texas are counsel herein for appellee, The State of Texas, and that they both reside in the city of Austin in Travis county, Texas.

Wherefore, appellant prays that notice be served upon counsel for appellee, as provided by law and that in consideration hereof, the judgment heretofore rendered in this cause be set aside and a rehearing herein be granted.

BAKER, BOTTS, BAKER & LOVETT,
Attorneys for The National Cotton Oil Co., Appellant.

(Endorsed:) Mo. 1566. National Cotton Oil Co., *vs.* The State of Texas. Motion for rehearing. Filed in court of civil appeals, 3rd supreme judicial district, Austin, Texas, Feb. 17, 1903. R. H. Connerly, clerk. Filed in supreme court Mar. 31, 1903. F. T. Connerly, clerk.

27 *Order Submitting Motion for Rehearing.*

Made February 25th, 1903.

Motion 1566.

NATIONAL COTTON OIL COMPANY
vs.
STATE OF TEXAS. } No. 2928.

Appeal from Travis county.

Motion for a rehearing submitted.

Order Overruling Motion for Rehearing.

Made March 11th, 1903.

Motion 1566.

NATIONAL COTTON OIL COMPANY
vs.
STATE OF TEXAS. } No. 2928.

Appeal from Travis county.

Motion for a rehearing: The motion is overruled.

28 In Supreme Court of Texas.

Judgment of Supreme Court.

NATIONAL COTTON OIL CO. vs. THE STATE OF TEXAS. } 3rd District.

APRIL 2ND, 1903.

This day came on to be heard the application of the National Cotton Oil Co., for a writ of error to the court of civil appeals for the third district, and the same having been duly considered, it is ordered that said application be refused; that the applicant, The National Cotton Oil Company and its sureties G. C. Street and James F. Grogan pay all costs incurred on this application.

I, F. T. Connerly, clerk of the supreme court of Texas, hereby certify that the above is a true and correct copy of the judgment rendered by said court on said application for a writ of error.

Witness my hand and the seal of said court, this the 18th day of April, A. D., 1903.

[SEAL.]

F. T. CONNERLY, *Clerk*,
By J. S. MYRICK, *Deputy*.

(Endorsed:) Application No. 3732. National Cotton Oil Co. *vs.* The State of Texas. Copy of judgment in supreme court. Application for writ of error refused. Filed in court of civil appeals, 3rd supreme judicial district, Austin, Texas, Apr. 18, 1903. R. H. Connerly, clerk.

29 *Bill of Costs of Supreme Court.*

Bill of costs in supreme court.

Clerk's Office, Supreme Court.

THE NAT'L COTTON OIL CO. vs. THE STATE OF TEXAS. } No. 3732. Certified Copy Bill of Costs, Supreme Court.

Filing application	.50
Docketing petition	.50
Entering appearance of counsel	.50
Filing two briefs	.60
Filing three papers	.90
Entering orders	.50
Entering judgment on application	1.00
Certified copy of judgment	1.00
Taxing costs of application	.50
Certified copy bill of costs	1.00
Total	$7.00

I, F. T. Connerly, clerk of the supreme court of Texas, hereby certify that the above copy of the original bill of costs is true and correct.

Witness my hand and seal of said court at Austin, this the 18th day of April, 1903.

[SEAL.] F. T. CONNERLY, *Clerk.*

(Endorsed:) Application No. 3732. Certified copy bill of costs in supreme court, Austin. The Nat'l Cotton Oil Co. *vs.* The State of Texas. $7.00. Filed in court of civil appeals, 3rd supreme judicial district, Austin, Texas, Apr. 18, 1903. R. H. Connerly, clerk.

30 *Writ of Error Bond.*

Know all men by these presents, that we The National Cotton Oil Company, G. C. Street and James F. Grogan, as principals, and W. B. Chew and E. W. Sewall, as sureties, are held and firmly bound unto the State of Texas in the full and just sum of five thousand dollars, to be paid to the said State of Texas, its successors or assigns; for which payment, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors and administrators jointly and severally by these presents.

Sealed with our seals and dated this 15 day of April, in the year of our Lord one thousand nine hundred and three.

Whereas, lately at a term of the court of civil appeals in and for the third supreme judicial district of Texas in a suit pending in said court between The National Cotton Oil Company, appellant, and The State of Texas, appellee, a judgment was rendered against The National Cotton Oil Company, appellant, and against G. C. Street and James F. Grogan, the sureties on its appeal bond, and The National Cotton Oil Company and said G. C. Street and James F. Grogan having obtained a writ of error and filed a copy thereof in the clerk's office of said court to reverse the judgment in the aforesaid suit, and a citation directed to the said State of Texas citing and admonishing said State to be and appear at a Supreme Court of the United States to be holden at Washington within thirty days from the date hereof.

Now the condition of the above obligation is such that if said The National Cotton Oil Company, G. C. Street and James F. Grogan shall prosecute their writ of error to effect and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

THE NATIONAL COTTON OIL COMPANY,
G. C. STREET, AND
JAMES F. GROGAN,
31 By BAKER, BOTTS, BAKER & LOVETT,
Their Attorneys of Record.
W. B. CHEW, *Surety.*
E. W. SEWALL, *Surety.*

STATE OF TEXAS, }
County of Harris. }

I, Henry Albrecht, clerk of the district court in and for said county of Harris, do hereby certify that W. B. Chew and E. W. Sewall, whose names appear signed to the annexed bond are, in my opinion, good and ample security for the amount therein specified and that if said bond was offered to me for approval, the same would be accepted and approved.

To certify which I hereunto set my hand and official seal, this 9th day of April, 1903.

HENRY ALBRECHT,
Clerk District Court, Harris County, Texas,
[SEAL.] By T. W. BROWNE, *Deputy.*

Approved this 22nd day of April, 1903.

H. C. FISHER,
Chief Justice Court Civil Appeals, 3rd Supreme Judicial Dist., Texas.

(Endorsed:) No. 2928. The National Cotton Oil Company *vs.* The State of Texas. Writ of error bond. Filed in court of civil appeals, 3rd supreme judicial district, Austin, Texas, Apr. 22, 1903. R. H. Connerly, clerk.

32 *Duplicate Writ of Error.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the court of civil appeals in and for the third supreme judicial district of Texas, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said court of civil appeals in and for the third supreme judicial district of Texas before you, or some of you, being the highest court of said State in which a decision could be had in the said suit between The National Cotton Oil Company, appellant, and G. C. Street and James G. Grogan, its sureties, and The State of Texas, appellee, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, a State on the ground of their being repugnant to the Constitution, treaties or laws of the United States, and the decision was in favor of their validity; or wherein a title, right, privilege or immunity was claimed under the Constitution or a treaty or statute of, or commission held or authority exercised under the United States and the decision was against the title, right, privilege or immunity specially set up or claimed under such Constitution, treaty, statute, commission or authority, a manifest error hath

happened to the great damage of the National Cotton Oil Company, G. C. Street and James F. Grogan, as by their complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid, in this behalf do command you, if judgment be therein given, that then and under your seal distinctly and openly you send the record and proceedings aforesaid, with all things concerning the same,
33 to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington within thirty days from the date hereof that the record and proceedings aforesaid being inspected the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States, should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this *22d* day of *April*, in the year of our Lord one thousand nine hundred and three.

[SEAL.]

D. H. HART,
Clerk Circuit Court of the United States,
Western District of Texas.
By J. W. HANCOCK, *Deputy.*

Allowed:

H. C. FISHER,
Chief Justice of the Court of Civil Appeals in and for the Third Supreme Judicial District of Texas.

(Endorsed:) No. 2928. The National Cotton Oil Company *vs.* The State of Texas. Writ of error. Duplicate. Filed in court of civil appeals, 3rd supreme judicial district, Austin, Texas, Apr. 22, 1903. R. H. Connerly, clerk.

Assignment of Errors.

In the Court of Civil Appeals, Third Supreme Judicial District.

THE NATIONAL COTTON OIL COMPANY
vs.
THE STATE OF TEXAS. } No. 2928.

Now comes plaintiffs in error, The National Cotton Oil Company, G. C. Street and James F. Grogan, and on writ of error from
34 the Supreme Court of the United States say that in the record and proceedings in said cause the said court of civil appeals erred:

First. In failing to sustain and in overruling plaintiff in error's first assignment of error, reading as follows: "The court erred in overruling defendant's demurrer numbered III, to plaintiff's petition, based upon the ground that the act of the legislature of the State of Texas, entitled 'An act to define trusts and to provide for

penalties and punishment of corporations, persons, firms, and associations of persons connected with them, and to promote free competition in the State of Texas,' approved March 30th, 1889, and articles 976, 977, 978, 979, 980, 981, 982, 983. 984, 985, 986, 987 and 988 of the Penal Code of the State of Texas, based upon said act, are in contravention of that provision of section 1 of article XIV of the amendments of the Constitution of the United States, which provides that no State shall deprive any person of life, liberty or property without due process of law nor deny to any person within its jurisdiction the equal protection of the laws."

Second. In failing to sustain and in overruling plaintiff in error's second assignment of error, reading as follows: "The court erred in overruling defendant's demurrer numbered IV to plaintiff's petition, based upon the ground that the act of the legislature of the State of Texas, entitled 'An act to define trusts, provide for penalties and punishment of corporations, persons, firms and associations of persons connected with them, and to promote free competition in the State of Texas, and to repeal all laws and parts of laws in conflict with this act,' approved April 30th, 1895, and articles 5313, 5314, 5315, 5316, 5317, 5318, 5319, 5320 and 5321 of the Revised Statutes of Texas, and 988*a*, 988*b*, 988*c*, and 988*d* of the Penal Code of said State, based upon said act of April 30th, 1895, are in contravention of that provision of section 1, article XIV of the amendments of the Constitution of the United States, which provides that no
35 State shall deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction equal protection of the laws."

Third. In failing to sustain and in overruling plaintiff in error's third assignment of error, reading as follows: "The court erred in overruling defendant's demurrer numbered V, to plaintiff's petition, based upon the ground that the act of the legislature of the State of Texas, entitled, 'An act to prohibit pools, trusts, monopolies and conspiracies to control business and prices of articles, to prevent the formation or operation of pools, trusts, monopolies and combinations of charters of corporations that violates the terms of this act, and to authorize the institution of prosecutions and suits therefor,' approved May 25th, 1899, is in contravention of that provision of section 1 of article XIV of the amendments of the Constitution of the United States, which provides that no State shall deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

Fourth. In affirming the judgment of the district court and not reversing said judgment.

Wherefore, plaintiffs in error pray that the judgment of said court of civil appeals be reversed, and that said cause be remanded and for such other proceedings as law and justice may require.

JAS. A. BAKER,
ROBERT S. LOVETT,
BAKER, BOTTS, BAKER & LOVETT,
Attorneys for the National Cotton Oil Company, G. C. Street, and Jas. F. Grogan, Plaintiffs in Error.

(Endorsed:) No. 2928. The National Cotton Oil Company *vs.* The State of Texas. Assignment of errors. Filed in court of civil appeals, 3rd supreme judicial district, Austin, Texas, Apr. 22, 1903. R. H. Connerly, clerk.

36 *Bill of Costs of Court of Civil Appeals.*

THE NATIONAL COTTON OIL COMPANY *vs.* THE STATE OF TEXAS. } No. 2928.

Appeal from Travis county.

Filing record	.50
Docketing cause	.50
Appearances	1.00
Filing briefs	.80
Filing and entering motion	.35
Orders	2.00
Filing 10 extra papers	1.00
Judgment	1.00
Taxing costs and copy	.50
Mandate	1.50
Recording opinion	2.00
Certified copy bill of costs	.75
Certified copy orders to sup. court of Texas	2.00
Costs of supreme court of Texas	7.00
Notices	4.50
Copy of motion	5.80
Issuing two precepts	2.00
Sheriff's fees	2.00
Transcript fee to U. S. Supreme Court	16.00
Total	$51.20

37 *Clerk's Certificate.*

Certificate of clerk of court of civil appeals.

Clerk's office, court of civil appeals, Austin, Texas.

I, R. H. Connerly, clerk of the court of civil appeals, 3rd supreme judicial district of Texas, hereby certify that the foregoing 36 pages contain a true and correct copy of all proceedings had in the district court of Travis county, 53rd judicial district of Texas, in the court of civil appeals of the third supreme judicial district of Texas, and in the supreme court of the State of Texas, as the same appear from the papers and files of record in my office, in cause No. 2928, The National Cotton Oil Company *vs.* The State of Texas, on appeal from Travis county.

Witness my hand and the seal of said court, at office at Austin, Texas, this the 7th day of May, A. D. 1903.

[Seal Court of Civil Appeals of the State of Texas.]

R. H. CONNERLY, *Clerk.*

38 In the Court of Civil Appeals, Third Supreme Judicial District.

THE NATIONAL COTTON OIL COMPANY
vs.
THE STATE OF TEXAS. } No. 2928.

To any justice of the Supreme Court of the United States or the chief justice of the court of civil appeals in and for the third supreme judicial district of Texas:

Petitioners, The National Cotton Oil Company and G. C. Street and James F. Grogan, respectfully represent that in the above entitled cause then pending therein on appeal from the district court of Travis county in and for the fifty-third judicial district of Texas, and wherein petitioner, The National Cotton Oil Company was the only party appellant, and petitioners G. C. Street and James F. Grogan were sureties on its appeal bond, and the State of Texas was the only appellee, the court of civil appeals in and for the third supreme judicial district of Texas, on the fourth day of February, 1903, affirmed a judgment and decree in said cause rendered on the second day of June, 1902, by the district court of Travis county in and for the fifty-third judicial district of Texas, in favor of the State of Texas, as plaintiff, and against petitioner, The National Cotton Oil Company, as defendant, in said district court and rendered judgment against the said G. C. Street and James F. Grogan, sureties, as well as against petitioner, The National Cotton Oil Company, for all costs of suit. That thereafter, and in due time, petitioner, The National Cotton Oil Company, filed in the said court of civil appeals its motion for rehearing, which motion was, on the 11th day of March, 1903, by said court overruled and denied; and
39 thereafter, and in due time said petitioner applied in due form and as authorized by law to the supreme court of the State of Texas for a writ of error in said cause to the said court of civil appeals, which application was thereafter, to-wit, on the 2nd day of April, 1903, by said supreme court denied and the writ of error prayed for by said petitioner refused, whereupon the said judgment of the said court of civil appeals, which is the highest court of the said State in which a decision in said suit could be had, became and is final.

And petitioners say that they are aggrieved by the said judgment and the proceedings in said suit, and that in the said judgment and proceedings had prior thereunto in said cause errors were committed to the prejudice of petitioners because they say there was in said suit

drawn in question the validity of statutes of and an authority exercised under a State on the ground of their being repugnant to the Constitution and laws of the United States, and the decision was in favor of their validity; and that titles, rights, privileges and immunities were in said suit claimed by petitioner under the Constitution and statutes of the United States, and the decision in said suit was against the titles, rights, privileges and immunities specially set up and claimed therein by petitioners under such Constitution and statutes, as will more fully appear from the demurrers numbered III, IV and V of petitioner, The National Cotton Oil Company as contained in its original answer in said suit to plaintiff's petition therein, and as will further appear from the first, second and third errors assigned by said petitioner in the said court of civil appeals, and as will also appear from the motion for rehearing filed by said petitioner in said court of civil appeals, and from the assignment of errors filed herewith and which petitioners pray your honors to read as a part hereof.

Your petitioners refer to the assignment of errors filed herewith and pray that the same be considered for the purposes of this petition as a part hereof, and further pray that a writ of error may be allowed and issued herein to the said court of civil appeals in and for the third supreme judicial district of Texas, which now
40 has the record in said suit, for the removal of said cause into the Supreme Court of the United States to the end that the errors in said judgment and proceedings in said cause may be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, and that the transcript of the record, proceedings and papers in said cause duly authenticated may be sent to the said Supreme Court of the United States.

JAS. A. BAKER,
ROBERT S. LOVETT,
BAKER, BOTTS, BAKER & LOVETT,
Attorneys for The National Cotton Oil Company,
G. C. Street, and James F. Grogan, Petitioners.

Allowed on this 22d day of April, 1903, with supersedeas upon furnishing bond in the sum of five thousand dollars, conditioned as the law directs.

H. C. FISHER,
Chief Justice of the Court of Civil Appeals of the
Third Supreme Judicial District of Texas.

41 [Endorsed:] No. 2928. National Cotton Oil Co. *vs.* The State of Texas. Application for writ of error. Filed in court of civil appeals, 3rd supreme judicial district, Austin, Texas. Apr. 22 1903. R. H. Connerly, clerk.

42 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the court of civil appeals in and for the third supreme judicial district of Texas, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said court of civil appeals in and for the third supreme judicial district of Texas before you, or some of you, being the highest court of said State in which a decision could be had in the said suit between The National Cotton Oil Company, appellant, and G. C. Street and James F. Grogan, its sureties, and The State of Texas, appellee, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, a State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of their validity; or wherein a title, right, privilege or immunity was claimed under the Constitution or a treaty or statute of, or commission held or authority exercised under the United States and the decision was against the title, right, privilege, or immunity specially set up or claimed under such Constitution, treaty, statute, commission or authority, a manifest error hath happened to the great damage of The National Cotton Oil Company, G. C. Street and James F. Grogan, as by their complaint appears, we being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then and under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court
43 at Washington, within thirty days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 22 day of April, in the year of our Lord one thousand nine hundred and three.

[The Seal of the U. S. Circuit Court, Western Dist. Texas, Austin.]

D. H. HART,
Clerk Circuit Court of the United States,
Western District of Texas,
By J. W. HANCOCK, *Deputy.*

Allowed:
H. C. FISHER,
Chief Justice of the Court of Civil Appeals in and for the Third Supreme Judicial District of Texas.

44 [Endorsed:] No. 2928. The National Cotton Oil Company *vs.* The State of Texas. Writ of error. Original. Filed in court of civil appeals 3rd supreme judicial district, Austin, Texas. Apr 22 1903 R. H. Connerly, clerk.

45 UNITED STATES OF AMERICA, *ss:*

To the State of Texas, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof pursuant to a writ of error filed in the clerk's office of the court of civil appeals in and for the third supreme judicial district of Texas, wherein The National Cotton Oil Company, G. C. Street and James F. Grogan are plaintiffs in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against said plaintiffs in error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 22d day of April, in the year of our Lord one thousand nine hundred and three.

H. C. FISHER,
Chief Justice of the Court of Civil Appeals for the Third Supreme Judicial District of Texas.

Attest with seal of U. S. circuit court, western district of Texas, this 22nd day of Ap'l, 1903.

[The Seal of the U. S. Circuit Court, Western Dist. Texas, Austin.]

D. H. HART,
Clerk of said Court,
By J. W. HANCOCK, *Deputy.*

46 [Endorsed:] No. 2928. The National Cotton Oil Company *vs.* The State of Texas. Citation. Filed in court of civil appeals 3rd supreme judicial district, Austin, Texas. Apr. 24 1903 R. H. Connerly, clerk.

Due service of the above and foregoing citation is hereby acknowledged
This April 24th 1903

S. W. T. LANHAM,
Governor of Texas.
C. K. BELL,
Attorney General of Texas.

[Endorsed:] No. —. National Cotton Oil Company *vs.* State of Texas.

Endorsed on cover: File No. 18934. Texas court of civil appeals, 3rd supreme judicial district. Term No. 706. The National Cotton Oil Company *et al.*, plaintiff- in error, *vs.* The State of Texas. Filed May 15th, 1903.